

REMARKS

Claim Status

Claims 3, 4, 11-16, and 21-26 are pending in the present application. No additional claims fee is believed to be due.

New Claims 21-26 are added.

Claim 21 states that the deformations comprise a plurality of tufted fibers integral with and extending from the first region. Support for Claim 21 can be found, for example, in Claim 1 as originally filed, page 10, lines 25-27, and FIG. 1.

Claim 22 states that the deformations comprise a plurality of tufted fibers wherein the tufted fibers are looped fibers. Support for the amendment can be found, for example, on page 4, lines 22-23 and FIG. 1.

Claim 23 states that the deformations comprise looped aligned fibers forming tunnel shaped deformations. Support for the amendment can be found, for example, on page 12, lines 17-22 and FIGS. 2, 3, and 6.

Claim 24 states that the fibers of the deformation and the fibers of the first region have an average fiber diameter, wherein the average fiber diameter of the deformation is less than the average fiber diameter of the first region. Support for the amendment can be found, for example, on page 11, lines 1-5.

Claim 25 states that an absorbent core is disposed between said fibrous web and a backsheet. Support for the amendment can be found, for example, on page 24, lines 6-12 and FIG. 23.

Claim 26 states that the deformations comprise looped aligned fibers forming tunnel shaped deformations. Support for the amendment can be found, for example, on page 12, lines 17-22.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. §§ 102(b) and 103(a) Over Cree and Ravaglia (U.S.
5,792,404)

Claims 3, 4, 11-13, and 16 were rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cree and Ravaglia (U.S. 5,792,404). The Applicants respectfully traverse the rejection because the Office Action's reliance on inherency as the basis of the rejection is improper.

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). Under the law of inherency, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, M.P.E.P. § 2112 Section IV. Furthermore, drawings in patents do not define the precise proportions of the elements and may not be relied on to show particular sizes unless the specification provides disclosure related to the proportions or sizes. *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977), M.P.E.P. § 2125.

Therefore, an Office Action cannot properly rely only upon the drawings of a reference teaching a process to reject a claim drawn to a composition unless the Office Action indicates how the reference cited discloses the characteristics of the process that would necessarily result in the claimed composition.

The Office Action does not provide any basis in fact and/or technical reasoning to reasonably support that the teachings of Cree and Ravaglia would necessarily result in the web of Claim 11 of the present application. Rather, the Office Action merely concludes, without providing any support other than reference to a figure in Cree and Ravaglia, that

the process disclosed in Cree and Ravaglia would inherently result in the web claimed. An inherency rejection based upon the theory that the drawing illustrating a process in a reference looks similar to a process disclosed in the specification of the application being examined is not proper because such an argument does not show that the claimed composition necessarily results from the process disclosed in the cited reference. The Office Action does assert that portions of the composition and structure of Claim 11 are taught in Cree and Ravaglia. However, just because the Office Action asserts some aspects of the claimed web might be similar to the web disclosed in Cree and Ravaglia does not mean that web disclosed in Cree and Ravaglia is necessarily the same as the web of Claim 11. The Applicants submit that the Office Action does not indicate how Cree and Ravaglia teaches using the roll in FIG. 7 of Cree and Ravaglia to achieve the web claimed in Claim 11 of the present application. Thus, the rejection based upon inherency is improper. Therefore, the Applicants submit that Claim 11 is allowable and request that Claim 11 be allowed.

Claims 3, 4, 11-13, and 16 depend upon Claim 11. As discussed above, the Applicants submit that Claim 11 is allowable. Therefore, the Applicants submit that Claims 3, 4, 11-13, and 16 are also allowable and respectfully request that these claims be allowed.

Rejection Under 35 U.S.C. § 103(a) Over Cree and Ravaglia (U.S. 5,792,404)

Claims 14 and 15 were rejected under 35 USC §103(a) as being unpatentable over Cree and Ravaglia (U.S. 5,792,404). The Applicants respectfully traverse the rejections. Claims 14 and 15 depend upon Claim 11. As discussed above, the Applicants submit that Claim 11 is allowable. Therefore, the Applicants submit that Claims 14 and 15 are also allowable and respectfully request that these claims be allowed.

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Conclusion

This response represents an earnest effort to place the present application in proper form. In view of the foregoing, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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By _____
Signature

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